EMPLOYMENT TRIBUNALS

Claimant: Miss Cheryl Edwards

Respondent: Manchester City Council

Heard at: **Liverpool** **On:** 23,24,25,26 February 2026 and 19 March 2026 in chambers

Before: EJ Aspinall
Mr J Flynn
Dr H Vahramian

Representation
Claimant: Mr Bronze, Counsel
Respondent: Miss Ferrario, Counsel

Reserved Judgment and Reasons

1. The claimant's claim for disability discrimination by way of failure to make reasonable adjustments is well founded and succeeds.

2. A remedy hearing has been listed and a separate notice of hearing will be sent to the parties.

Background

3. By a Claim Form dated 22 December 2023 the claimant brought claims for age, race, sex and disability discrimination. She worked for the respondent as a Senior Schools Admissions Officer and had requested compressed and reduced hours working patterns at various times. She says the failure to allow compressed 4 day per week working and reduced hours was a failure to reasonably adjust. She says she was disabled by reason of both (i) anxiety and depression and (ii) menopause.

4. The respondent defended the complaints and they came to a case management

hearing before EJ Humble on 13 August 2024. The claimant withdrew age, race and sex discrimination and a List of Issues was prepared. The case was listed for a final hearing in August 2025 but that had to be postponed because of surgery for the respondent's key witness.

5. The matter came to final hearing on 23 February 2026 which was to have been in person at Manchester but when no judge was available at Manchester, and the parties did not wish to travel to Liverpool, rather than postpone further, the Regional Employment Judge converted the hearing to a remote hearing.

6. Following an opening discussion at which everyone was consulted, and despite the claimant's preference to appear in person, the Tribunal decided it was in the interests of justice to remain as a remote hearing, having taken into account the availability of electronic and paper documents, the needs of the Tribunal Members, the claimant's representative, the witnesses and the capacity issues at hearing centres.

7. At final hearing the respondent conceded disabled status; for anxiety and depression from 8 April 2021 with knowledge from that date and for menopause from March 2021 but with knowledge from 8 May 2021.

8. The claimant withdrew any reliance on "gynaecological issues" as a disability.

9. The respondent accepted that it had operated a PCP of requiring the senior schools admissions officer post holder to work a five day week. It said the claimant initially (in 2020) wanted to work a 4 day week to allow her to take up a volunteering role as a counsellor. It disputed that the PCP put the claimant; because of either or both of the disabilities, at a substantial disadvantage. The claimant said the substantial disadvantage was the overlapping effect of both conditions so that she experienced fatigue, a lack of concentration and brain fog. She said she needed the compressed hours over 4 days and later reduced hours, 32 hours, then 30 over 4 days, to manage her conditions and that these were reasonable adjustments which were not provided.

Opening discussion

10. The first morning was taken up with an opening discussion about format, documents, witnesses, a timetable for the hearing and the List of Issues.

List of Issues

11. The agreed List was, subject to amendment to reflect the concessions above, as follows:

Disability

1. The claimant relies upon the mental impairment of depression and an anxiety disorder, and the physical impairments of the menopause as disabilities.

2. The respondent concedes that both conditions were disabilities between March and April 2021 and December 2023. It says it knew of the disabilities from 8 April 2021 for anxiety and depression and from 8 May 2021 for the claimant's symptomatology of menopause.

Reasonable adjustments

3. A "PCP" is a provision, criterion or practice (s 20(3)). Did the respondent have the following PCP: a requirement upon the claimant to work full-time, a five day week, from March 2021 to November 2023. The respondent concedes that it did.

4. Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability (or disabilities) in that the claimant required time off, a break in her working week, to alleviate and manage her conditions?

   The claimant says she was at a substantial disadvantage due to the overlapping effects of her conditions causing her tiredness, lack of concentration and brain fog.

   The respondent says the conditions did not cause substantial disadvantage and that the claimant wanted the compressed or reduced hours so as to take up a volunteer role and not to manage her health.

5. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

6. Did the respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage? The claimant says that the following adjustments to the PCP would have been reasonable: to have reduced her days of work to four each week, with a break day on a Wednesday, and a proportionate reduction in her working hours.

   The respondent says that despite not accepting substantial disadvantage it did at all material times take reasonable steps to adjust for the claimant.

7. By what date should the respondent reasonably have taken those steps?

   The claimant accepts that the reasonable adjustment was made with effect from December 2023 but her case is that it should have been much earlier given that she made several flexible work requests between 24 July 2020 and 21 November 2022 and raised a grievance in relation to the matter on 15 July 2023.

Time limits

8. Given the date the claim form was presented (22 December 2023) and the effect of early conciliation (13 October – 24 November 2023), any complaint about something that happened before 14 July 2023 may not have been brought in time.

9. Was the discrimination complaint made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

   9.1 Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?

   9.2 If not, was there conduct extending over a period?

   9.3 If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?

   9.4 If not, were the claims made within such further period as the Tribunal thinks is just and equitable? The Tribunal will decide:

   9.5 Why were the complaints not made to the Tribunal in time?

   9.6 In any event, is it just and equitable in all the circumstances to extend time?

Adjustments

12. No one required any particular adjustment at the hearing.

Documents

13. There was a bundle of 823 pages, a separate Witness Statement bundle of 52 pages, a Cast List, Chronology, Respondent's reading List to which Mr Bronze added additional references for the claimant and there were indices to the Bundle and the Witness Statement bundle. A letter dated 8 December 2023 was added to the bundle by consent during the hearing.

14. The documents were available electronically and also provided on paper and delivered to Manchester so that the non-legal members who had thought the case was in person, could collect them, and work remotely but with paper bundles.

Oral evidence

15. The Tribunal heard oral evidence from the claimant. She gave her evidence in a straightforward and helpful way.

16. The respondent's Mrs Campbell-Allwood gave evidence. She was the decision maker on the compressed and reduced working hours' requests.

17. The respondent's Ms Jenkinson gave evidence. She was the officer hearing the claimant's grievance.

Background events

18. The claimant was employed as a Senior Schools Admissions Officer working 35 hours per week over five days from July 2014. She managed, initially, a team of seven staff who dealt with admissions to secondary schools. Some members of her team worked a four-day week, ZD because of health issues and CD and VM worked term time only. From July 2021 her role changed as set out below.

First flexible working request

19. On 24 July 2020 the claimant applied for flexible working requesting compression of her 35 hours into four working days per week. She initially requested Thursday as the nonworking day during term time only. She said *I would like to compress my hours over 4 days but term time only.* This application was not for health related reasons. She had applied to work in a volunteer counsellor role for five hours a week in a local school. She said in her application that she thought there would be no impact on service delivery.

20. Her line manager Miss Cosson approved it in part saying in writing on the application form; I*t appeared the team could manage if the claimant did 4 days.* This was sent to the claimant who believed that the request had been approved. It appears not to have been sent to the decision maker, Head of Service Mrs Campbell-Allwood because there were missing dates in the form, until 3 September 2020.

21. The respondent's Flexible Working Policy, from February 2019 set out the benefits of flexible working for employer and employee and recorded the statutory right to request flexible working. It talked about balancing business and individual needs. It set out a range of options including; part-time working, job sharing, flexi-time working, staggered working hours, compressed hours, voluntary reduced working time, occasional working from home, permanent home working, career breaks and sabbaticals, flexible retirement, annualised and seasonal working, term time working and other informal arrangements that can be agreed. The Policy set out a process to be followed when a flexible working request is made. It recited that there is no automatic right for the employee to be allowed to work flexibly, that a manager has a duty to deal with requests in a reasonable manner within a reasonable timeframe. It said that all flexible working requests should be received with the view that they will be granted unless there is a genuine business reason not to. The policy set out the business reasons for declining a request.

22. The Policy provided

> *" after giving consideration to the request, the Head of Service should respond to the employee in writing as soon as possible, normally within 14 days of the meeting either accepting the request in full… In part … Or rejecting the request giving the prescribed business reasons for doing so and informing the employee of the right of appeal"*

23. The Policy clearly envisaged that there should be a meeting with a Head of Service to discuss the request within 28 days of the request having been

made, that there were criteria to be applied to the decision making, that the decision was to be made by a Head of Service, that the respondent should give an outcome decision in writing within 14 days of the meeting and that he employee had a right of appeal to a different decision.

24. The Policy provided that compresed working hours permit employees to work the total number of contractual hours over fewer working days by working longer individual days.

25. The claimant's request was made on 24 July 2020 to Miss Cosson. She expected to get a response within the 28 days set out in the Flexible Working Policy. The claimant did not get a response to her flexible working request so on 3 September 2020 she contacted Mrs Campbell-Allwood.

26. Mrs Campbell-Allwood said that she had not seen a full request form. She had had the form sent to her by Miss Cosson and at some point during September 2020, without having met with the claimant, she considered it. She decided from her own knowledge of service delivery that Wednesday and Thursday were key attendance days for the claimant because of a function known as "offermatics" which involved checking of alternate placements for pupils that needed to be done on those days.

27. On 2 October 2020 Mrs Campbell-Allwood advised the claimant by telephone that the request could only be met if she worked in a different team, the Free Travel Team, in a different post but still as a Grade 6 Officer. The claimant accepted that move during the call to get her the four days a week she wanted. The claimant thought about it again over the weekend and decided that it did not feel fair to her that she should have to move roles to get flexible working when others in her team worked flexibly. She told her managers that she did not want to move to the Free Travel Team. She asked about appeal. Mrs Campbell-Allwood told her to put an appeal in writing to her.

28. The claimant submitted her appeal to Mrs Campbell-Allwood on 12 October 2020. She gave the following grounds of appeal

    1. *Not followed the Flexible Working Policy within the timescale*

    2. *No verbal communication with management to discuss the application*

    3. *Conflicting decisions - 7 September line manager agreed, 2 October JCA declined*

    4. *Offermatics was being done by Miss Cosson on Fridays*

29. Mrs Campbell-Allwood replied to the appeal against her own decision in writing on 14 October 2020. She replied to each of the four grounds the claimant had raised. Mrs Campbell-Allwood apologised that timescales were not met. She referred to the 2 October 2020 call as communication to discuss the application. She said the 7 September email from Miss Cosson was not a final decision but a part completed form. She said the decision was hers and she had explained it. She referred to the offermatics and said it needed to be checked by the Senior Officer on the Thursday before the offermatics was run

on a Friday. She said that as the team comes back in after COVID the offermatics will move to a Thursday. She said the request could be agreed in terms of the claimant working compressed hours for a different function within the service at the same grade and conditions. Mrs Campbell-Allwood gave the claimant until 16 October for the claimant to accept the move to an alternate post.

30. This was a move to the Free Travel Team in a Grade 6 post in which the claimant could work her contracted 35 hours compressed over four days, having her requested day, Thursday, as a nonworking day.

31. The claimant did not want to move to the Free Travel Team role. She approached HR to complain about the process that had been followed. On 9 November 2020 the claimant, accompanied by her union representative, met with Mrs Campbell-Allwood and her line manager Miss Cosson. At that meeting Mrs Campbell-Allwood told the claimant that the move to the Free Travel Team was no longer available. At the meeting the claimant's union representative Mr Greatbatch suggested a trial period in which the claimant could have her compressed hours in her own role with Thursday as a clear day but could come into work on occasional Thursdays from 3 PM to run the offermatics. Mrs Campbell-Allwood and Miss Cosson thought that this could work if the claimant had done the preparation in advance. It was agreed that this compressed way of working would be allowed on a trial basis from November 2020 until mid-February 2021 and would then be reviewed.

32. Mrs Campbell-Allwood wrote to record that meeting in a letter dated 9 November 2020. The letter set out a proposal for a trial run. It was agreed at that meeting that the claimant could work the compressed week, working 35 hours over four days during term time with Thursday being the nonworking day, on a trial basis to be reviewed in February 2021 but with the claimant coming in on Thursdays at 3pm every third week in term time to run the offermatics approval. The letter set out the claimant could put any outstanding concerns in writing to Michelle Devine within 10 days of the 9 November 2020 meeting.

33. On 16 November 2020 Miss Cosson emailed the claimant with routine content about workflow seeking to avoid critical tasks all being undertaken in the same week ,and preferring instead that they were spread over the month, and informed her that the respondent would be recruiting again for a full-time grade 5 member of staff and a 17.5 hours job share member of staff. She said she hoped it wouldn't take too long to get a full team back and she acknowledged that the claimant was having to support Secondary Schools with reduced staff numbers.

34. In early December 2020 the claimant had to chase Miss Cosson for written confirmation that the trial period had been agreed. Miss Cosson wrote on 4 December 2020 to say it has been agreed with a review to be held in April,

35. The claimant worked the trial period from around mid December 2020. She came in as needed to run the offermatics task on Thursdays. The claimant had a footer on her email informing people that her working week during term

time was Monday, Tuesday, Wednesday and Friday.

36. In early January Miss Cosson was concerned that the claimant had not used up all her annual leave. She wished to manage that leave and prompted the claimant to please book dates urgently. On 12 February 2021 Miss Cosson wrote to tell the claimant that she hadn't booked the annual leave as requested, so Miss Cosson had allocated her leave to her to ensure that there was sufficient service cover across the Department. She allocated the claimant; Thursday 18 February, Thursday 4 March, Friday 5 March, Monday 8 March, Tuesday 9 March, Wednesday 10 March, Thursday 11 March and Friday 12 March.

37. On 18 March 2021 Miss Cosson met with the claimant to discuss concerns she had with the claimant's performance. They included

    a) errors being made with the alternative offers process; pasting the wrong offers into the wrong sections of the spreadsheet so that offers were incorrectly made

    b) the need for quality checking the claimant's work

    c) problems of the preparation of in year fair access schedules; papers being sent out late panels; information schedules not having the crosscheck of profiles

38. Miss Cosson acknowledged positive suggestions made by the claimant about producing a tracking spreadsheet. The claimant said that she was feeling isolated, that the isolation was affecting her mental health. Miss Cosson agreed to look at having the claimant coming in to work on site two days a week to help with support and mental health.

39. Miss Cosson said that the trial on compressed hours was not working. On 19 March 2021 Miss Cosson put that in writing. She wrote

    in light of the above issues in relation to alternative offers and IYFAP work and having looked at the needs of the service overall the compressed hours would not be able to continue after the Easter break

40. Miss Cosson suggested that she meet with the claimant again after the claimant's annual leave to look at support materials that Miss Cosson produced to help the claimant.

The Facts

8 April 2021 meeting with Miss Devine

41. The claimant complained about cessation of the trial. The claimant met with Head of Service Miss Devine to protest about this decision on 8 April 2021. The claimant said she'd been suffering from menopause symptoms and was on HRT. She made a link between her menopause symptoms and her work performance during the trial period. She became upset during the meeting so that it was agreed a further meeting would take place with Miss Devine and

Mrs Campbell-Allwood. That meeting was on 13 April 2021. The claimant explained that she had brain fog, sleep deprivation, lack of concentration and motivation. Mrs Campbell-Allwood explained planned changes to the claimant's role so that she would take on IYFAP Panels work and Category 2 Applications. It was explained that she would be working within a new team and a new team member and that she no longer needed to manage the Secondary team. The claimant was again very upset at this meeting and consented to a referral to OH.

42. The claimant had a telephone consultation with OH on 13 May 2021. She was off work due to a reaction to COVID vaccination at that time.

The first occupational health report 13 May 2021

43. OH reported that the claimant was experiencing menopause, that she been on medication since March 2020, that she had been reviewed by a gynaecology specialist and given additional medication. OH reported symptoms including disturbed sleeping patterns, anxiety, hot sweats and a reduction in concentration level and memory. OH reported that the claimant described her mood as low, that she was experiencing disrupted sleep and loss of appetite, that she has reduced concentration levels and has been increasingly forgetful. OH recommended

    a. attending counselling to assist with coping strategies for anxiety

    b. referral to the employee assistance programme

    c. a stress risk assessment

44. The 13 May 2021 report contradicted itself deeming the claimant both fit and unfit for work but required a review by OH in two weeks.

The second occupational health report 28 May 2021

45. The claimant was assessed by OH again on 28 May 2021. The manager requesting the report had asked for advice on potential workplace adaptations. At that time the claimant had 27 years service, was working remotely but attending on site twice a week. OH reported that the claimant had said she felt let down, undervalued and overwhelmed on top of dealing with symptoms of menopause and that the outcome that her flexible hours was stopped. She reported her mood was good but she had difficulty sleeping at night.

46. The report recorded that the claimant was experiencing *severe symptoms of the menopause including low concentration difficulty with memory*. The report recommended

    a. stress risk assessment at the earliest opportunity and implement any outcomes

    b. a weekly management meeting to see how the claimant is coping with her work and health condition

c. one-to-one training with extra time for the claimant to learn new tasks especially tasks involving computers

d. professional counselling sessions to boost confidence and coping strategies / management to follow up to ensure access to the service

e. continuing to allow working from the office twice a week

47. By the end of May 2021 the claimant was experiencing severe symptoms of menopause. She experienced disturbed sleep, hot sweats, difficulty with concentration, poor short-term memory, low mood, disturbed appetite and increased anxiety. It was affecting her ability to do her job. She was making mistakes transposing detail into spreadsheets and was feeling overwhelmed.

48. On 15 June 2021 Mrs Campbell-Allwood met with the claimant and issued the claimant a management instruction letter. It had come about because of the claimant's non-attendance at an IYFAP meeting in place of Miss Cosson. The letter set out

> <u>conduct-failure to comply with Manchester City Council's policy procedure / have responsibility for process</u>
>
> *on 15 June 2021 there was not a presenter at the North IYFAP panel. After speaking with both yourself and staff both advised the other was presenting the cases of which none of you did. The lack of communication, responsibility and confirmation between yourselves that this panel was covered resulted in cases not being formally presented to the panel of Head Teachers which is unprofessional and may have caused reputational damage to not only the Head of Service was also to the Department.*
>
> *…. This morning's incident was not acceptable.*
>
> *…. You must adhere to the following with immediate effect*

49. The letter went on to set out instructions regarding communications, organisational skills, approval of cases for the panel, deadlines being met, paperwork prepared and a schedule of cases to be approved. Mrs Campbell-Allwood wrote that it is not acceptable for any officer involved to be unsure who is presenting cases or unequipped to step in where required. The letter warned the claimant failure to comply with the management instruction may result in formal action being taken under the disciplinary procedure.

50. The claimant felt this was unfair as she said it had not been made clear to her that she needed to attend that meeting in place of her manager. The claimant contacted HR and Miss Cosson subsequently emailed HR to say that the instruction had been unwarranted; that the claimant's non-attendance had clearly been an oversight and so the formal management instruction should be withdrawn.

51. In July 2021 the claimant took over the IYFAP team which dealt with primary and secondary school admission for children who are hard to place. The

claimant was told this was to be a trial. She no longer had a team of staff to manage. A new team member started on 31 August 2021 to support her. That person left on 21 October 2021. The claimant was supported with temporary staff until January 2022. She had no support after January 2022.

52. The claimant continued to experience severe symptoms of menopause and was also under investigation for other gynaecological issues. She felt stressed and overwhelmed at work. The stress risk assessment which had been recommended by 2 OH reports in May 2021 had not been undertaken.

53. By the end of January 2022 the claimant was working alone on the IYFAP work and struggling because of the volume of work and the fact that she was unsupported. She was also struggling because the combined symptoms of her menopause, anxiety and depression of low mood, fatigue, poor concentration, poor memory, hot sweats, disturbed sleep and disturbed appetite meant that it was increasingly difficult for her to work across five days per week.

54. The respondent knew from April 2021 that the claimant wanted to work 4 days per week to better manage menopause, that two OH reports in May 2021 had recommended immediate Stress Risk Assessments but that none were carried out.

55. On 27 March 2022 the claimant went absent from work due to stress.

Third occupational health report

56. On 8 April 2022 the claimant had an OH assessment. The OH professional produced a report dated 10 April 2022 and recommended that it be read in conjunction with the earlier reports of 13 May 2021 and 28 May 2021. The claimant reported a general lack of support as well as a lack of awareness and understanding as to how the menopause may be impacting upon working abilities, contributing to her low mood and sickness absence. The claimant reported that she continued to experience impaired cognition following menopause; difficulty with memory and episodes of brain fog. She reported regularly misplacing items such as bank cards and mobile phone. She reported difficulty using a computer and that she forgets how to navigate certain software. The report cited that the claimant continued to take HRT medication to manage symptoms of menopause and anxiety. The report recorded a recent exacerbation of mental health symptoms. The report recorded that the claimant had benefited from being off sick and having a period of rest and recuperation as she noticed a gradual improvement in severity of symptoms.

57. The report recommended a return to work in the next 4 to 6 weeks with workplace adjustments *if operationally feasible*. The report set out that a barrier to a likely return to work relates to her work related concerns. It recommended

    a. management consider meeting with Cheryl as soon as possible to discuss her views and perceptions around work-related issues and attempt to find a solution

b. conduct stress risk assessment to discuss her concerns and hopes these issues can be resolved

c. access talking therapies/ the employee assistance programme

d. within the stress risk assessment management may wish to assess the need for additional training or resources for example difficulties in using the computer system, dividing a step-by-step guide which the claimant can refer back to

e. management are advised to maintain regular communication to establish an appropriate return to work date and ensure adequate support throughout the period

58. The report said that due to the duration of the claimant's symptoms and the requirement for daily HRT medication the Equality Act 2010 is likely to apply. The report noted the claimant's concerns that the previous occupational health advice had not been implemented and that the failure to act on it had contributed to her psychological stress and sickness absence. On 9 May 2022 the claimant attended an Attendance Monitoring meeting with Miss Cosson and was accompanied by her union representative. Notes were taken by the respondent at that meeting. Those notes were not provided to the Tribunal.

59. At the 9 May 2022 meeting the claimant was repeating her request for compressed hours, working over 4 days, so as to be able to better manage her symptoms. Miss Cosson said that compressed hours could be considered if the claimant were medically redeployed to a lower grade role with three years' pay protection. The claimant's union representative protested that the respondent, in suggesting demotion, appeared to be taking a capability approach. Miss Cosson did not suggest any other options to facilitate compressed working for the claimant.

60. Following that meeting, on 9 May 2022, Miss Cosson wrote to the claimant. She said

> *" at the meeting you explained how the menopause has been causing you a number of severe issues in particular in relation to your memory and that you feel tired no matter how much sleep you have and you experience brain fog. You have found the change to EYES {computer system} difficult to adapt to and have been working without a Grade 5 to support you in your role.*
>
> *I explained that given your occupational health report and what you had told me we could consider medical redeployment which would give you pay protection for three years. In order to do this we will need to have a stress risk assessment and also an occupational health report.*

61. The letter went on to explain the stress risk assessment appointment was to take place on 25 May 2022 and that a further referral to OH would be made. The claimant remained off sick and was deeply distressed that the respondent appeared to be taking a capability-based approach. She felt an assumption had been made that she could not do her own job in compressed hours due

to the symptoms of her menopause and anxiety and depression.

62. On 24 June 2022 the claimant attended the appointment for the Stress Risk Assessment (that had first been recommended on 13 May 2021) with Miss Cosson. Jane Lucy a health and safety officer was also present. The SRA outlined the claimant's key duties and responsibilities. It set out the claimant's concerns and barriers in carrying out her work. It recited that the claimant had suffered from symptoms of menopause and had been prescribed with HRT, that she was under ongoing gynaecological investigation, that she was struggling with the new computerised system and had made some errors, that the claimant felt training had been poor and that staff had not had face-to-face training. It said

> *"in the past year Cheryl stated that she has told Management how she was struggling with feeling stressed and coping with menopause symptoms and did not feel supported through this. There has also been problems with the shortage of staff and recruitment – [it taking] a long period of time to replace staff. Also, while she was in a meeting with management she was told there could be an option of medical redeployment (lower grade) although this would be pay protected for three years. Cheryl felt this was disrespectful and her feelings of being pushed out. Also this role is a grade lower and she felt humiliated."*

63. The SRA identified additional support by way of a phased return to work. Miss Cosson said that at present there are temporary members of staff who are excellent at supporting the service. The report recommended that management look at

    a. a phased return,

    b. reduced workload for an interim period,

    c. further training on the new computerised system for the EYES work

    d. six sessions of counselling through the Employee Assistance Program.

64. In July 2022 the claimant made contact with the respondent's Menopause Group seeking their support.

<u>Written request for reasonable adjustment in the form of : Second flexible working request</u>

65. On 13 July 2022 the claimant submitted a form entitled Application for Flexible Working. She said

> *I would like to work four days a week over 32 hours (eight hours per day) having every Wednesday off work. I was recently on sick leave due to stress at work and have not been supported this has exacerbated by menopause symptoms. I think the day off each week to help my well-being and I will be able to manage my symptoms in relation to sleep and concentration under the Menopause Policy.*

> The claimant set out that she thought there would be no impact on service delivery because she would still be doing 32 hours per week and would continue to work remotely from home for two of those days and attend on site two days. She said she would be regularly in contact with her team by telephone and mail. She set out once a month she sends out necessary paperwork to support IYFAP panel.

66. In response to a question *is the request being made as a reasonable adjustment for a disability ?* the claimant answered Yes.

67. The claimant returned from sickness absence on 15 July 2022 during the summer holidays, on reduced hours. She had a phased return working 50% for two weeks and then a further two weeks at 75% before returning to full-time at the beginning of September 2022. During the claimant's absence period and her phased return Miss Cosson covered the claimant's duties.

68. On 24 August 2022 the claimant met with Miss Cosson as part of a return to work meeting and to discuss the reasonable adjustment request. The claimant repeated her request for reasonable adjustment verbally at that meeting. She said that she was very unwell due to her menopause and anxiety and depression symptoms. She said that she had had a coil fitted in July and that this had made her worse, that she had been feeling suicidal, that her depression and low mood were at their worst.

69. Miss Cosson said that a new person was to be brought in at Grade 5 and needed to be inpost and fully trained to do the Wednesday work before the claimant could compress her hours. The claimant did not agree that this should be conditional. She said *why do I have to wait and this could be as long as a piece of string*. She was concerned that the respondent did not have a person in post. Miss Cosson said that they were hoping to appoint within weeks. The claimant said that she needed to start a four-day pattern in September 2022. Following that meeting Miss Cosson as line manager declined the request giving the following written reasons:

> Business need; *although there is no current meeting planned for Wednesdays Cheryl needs to be able to respond to requests for information, update panel ahead of the meeting on Thursdays and provide updated decisions from meetings taking place on Tuesdays. The section 19 work is due to commence which has always been part of this role will require a quick turnaround of work from receiving information on a Wednesday to be updated and distributed on a Thursday therefore Cheryl's request is not compatible with the needs of the business.*
>
> *The reduction in hours is not sufficient to allow either an act up or a recruiting for a job share for the post to ensure that the business continue to operate without risk.*

70. The reasons included a list of things that Miss Cosson said she had done to support the claimant; referral to EAP, one to one training on EYES computer system, training on EYES with system trainers, a new Grade 5 being recruited to join IYFAP team which will provide the additional support that was provided

by a temp until January 2022, *a Grade 6 is now in post over the outreach time to provide the initial quality check of IYFAP profiles.* There was no discussion as to how that Grade 6 might be used to cover the Wednesday tasks and her Wednesday work done by the claimant across the other four days. The form was then sent to the decision maker Mrs Campbell-Allwood. Mrs Campbell Allwood completed her part of the form. She set out that the post is full time as it comprises statutory duties that must be performed. She said attendance on Wednesdays was crucial. She said non attendance on Wednesday could lead to the following identified risks; service delivery may be ineffective which results in multiple statutory duties not being met effectively, negative reputational damage, further pressure on remaining staff. She said that the request was approved in part subject to a precondition

> *that the flexible arrangements will not commence until the post of Admission Officer is filled, staff is fully inducted and fully trained, resulting in a designated admission officer post within in year and based on the IYFAP CAT2 section 19 function.*

71. She said it would be temporary and subject to termly review but could be terminated if it did not meet effective business need. She set out the following criteria for the claimant to comply with before the adjustment could be made:

    a. *the admission officer is fully trained and clear on the IYF in section 19 process and has written guidance to follow to carry out the admin work to support your absence on Wednesday*

    b. *that any admin work not completed by yourself due to the reduction of your working hours in this request usually completed by Cheryl, that work is delegated and completed by the named Admission Officer*

    c. *that you Cheryl will be responsible for the management of day-to-day duties of setting of the admin work for the Admissions Officer for the Wednesday prior to your absence on Wednesday*

    d. *that you Cheryl quality assure and performance manage the prior admin work set and undertaken by the Admission Officer on the Thursday Friday of the week to ensure it has been completed action accordingly an effective standard*

    e. *that you Cheryl will investigate all papers to be presented to a panel on Thursday and individual details and check at the end of every Tuesday to ensure they are as up-to-date as possible at that time before you take absence on Wednesday*

    f. *that you Cheryl will ensure all section 19 investigations are written up and return to the statutory lead and Head of Service on a Thursday (every two weeks)*

    g. *that you Cheryl are responsible for final copies of all documents circulated to schools and Head of Service in a timely manner which are up to date according to the EYES system and free from errors such as spelling, year groups, sibling, address details and all other*

relevant notes

72. So, there was a precondition of recruitment which was beyond the claimant's, her line manager's and the Head of Services' control, and then there were seven criteria for the claimant to comply with in training and managing the new recruit when in post, before the claimant could have any adjustment to her working hours or pattern.

73. On 14 September 2022 the claimant, feeling overwhelmed and continuing to experience anxiety, depression, fatigue, lack of concentration, brain fog, poor short-term memory, disturbed sleep and disturbed appetite went off sick. Her sick note recorded "depressed mood".

74. The claimant had union representation at that stage.

Second written request for reasonable adjustment in the form of third flexible working request

75. On 22 September 2022, whilst off sick, the claimant submitted a third Application for Flexible Working Form. In it she requested that she be allowed to reduce her working hours from 32 hours to 30 hours worked over four days compressed hours leaving Wednesdays clear. She said

> *I would like to work four days a week over 30 hours having every Wednesday off work. I'm recently suffering with depression/low mood/brain fog and poor concentration this has been exacerbated due to menopause symptoms. I believe taking a day off each week and help with my well-being and I will be able to manage my symptoms in relation to sleep and poor concentration.*

76. The claimant again set out her views on the impact on service delivery, saying that she would still complete 30 hours but over four days and would work from the office for the majority of the week. She explained that being on site would help her as she could print and visually quality check her work which had been hard for her to do working from home on screen. She set out that once a month she sends out the IYFAP panel paperwork and that she understood she would have to ensure that the paperwork was prepared and signed off within the timescale and sent to relevant representatives. She proposed that she could do that on a monthly basis on a Tuesday and that work could be organised within the Department. She said she would ensure that work for meetings in relation to the hospital school would be completed within timescale. She said that once the Admission Officer is in place she would ensure that that person is fully up-to-date on the Tuesday work schedule and the work to be completed in the claimant's absence.

77. The claimant again said that she was making the request as a reasonable adjustment for disability.

78. Mrs Campbell-Allwood responded in writing on the form saying that the panel tasks required to be undertaken needed a full 35 hours to process and she reiterated that attendance on Wednesday is crucial to meet the service delivery. Mrs Campbell-Allwood felt that nothing had changed since the

claimant's second flexible working request so in completing the form she cut and pasted from a previous response the risk she had identified in the claimant not attending on Wednesdays, and the precondition of recruitment of Admissions Officer and seven criteria that the claimant would be responsible for meeting before the adjustment could be put in place.

79. The request was on paper approved in part but in effect denied. The claimant was still required to work over five days a week with no reduction in hours pending the appointment of an Admissions Officer, which was outwith the control of the claimant, her line manager or Head of Service Mrs Campbell-Allwood.

Third Occupational Health report

80. On 20 October 2022 the claimant who was off sick had an OH assessment. The OH report set out that the claimant was experiencing anxiety, low mood and unstable emotions, loss of appetite, disturbed sleep and reduced confidence. The report said that due to the severity of the symptoms the claimant had sought GP support and was awaiting further assessment and referral to psychological therapy the report stated that the claimant continued to experience impaired cognition due to menopause. It stated brain fog, reduced concentration and fatigue. It cited that the claimant continued on HRT under GP support and the report declared the claimant currently unfit for work due to ongoing psychological symptoms and recommended a further OH review in 4 to 6 weeks. The report set out that the claimant had work-related concerns that she perceived had contributed to her heightened psychological symptoms. The report stated

> *she has experienced reduced cognition due to ongoing menopausal symptoms. It is possible that these symptoms may have impacted upon her productivity and work performance.*

81. The report cited the claimant had said that management had not supported her and had been unable to identify appropriate workplace adjustments. The report recommended stress risk assessment and said

> *following this assessment I would suggest that management and Cheryl work together to determine appropriate action plan to proactively manage these concerns. Finding a practical way forward is likely to have a positive impact on her psychological well-being and result in a return to work.*

82. The report recommended supportive communication and regular welfare checks. It again said that due to the duration of menopausal symptoms and the requirement of medication to assist symptom management and the impact of symptoms in her day-to-day activities the Equality Act would be likely to apply. On the issue of the reduced hours request the recommendation was that it is possible that a move to a role with less deadline pressure may be of benefit to support a return to work.

83. The OH report said that management may wish to consider a review with an OH physician as that person could provide an in-depth medical insight into short and long-term prognosis and management of menopausal symptoms in

the workplace. This was not done. In an addendum to the report on 3 November 2022 the occupational health advisor pointed out that the claimant was having difficulty accessing talking therapy to the NHS, that she wanted to have therapy before returning to work but it was not likely to start until January 2023. The OH adviser said management we wish to consider a referral to counselling through Health work, their own provider, so as to expedite the claimant's access to therapy.

Attendance monitoring interview 8 November 2022

84. On 8 November 2022 the claimant attended an attendance management meeting with Miss Cosson accompanied by her union representative. She was told that someone had been appointed to the Grade 5 role and should be in post soon. Miss Cosson wrote to the claimant on 16 November 2022 following that meeting to set out what had been discussed. The letter recorded the reason for absence of stress, anxiety, depression exacerbated by menopause symptoms. Miss Cosson recorded that the claimant had said she felt overwhelmed with the work required of her and that she suffered brain fog and fatigue as part of menopause. At the meeting the claimant had explained how those symptoms made it harder for her to complete her tasks particularly the IYFAP tasks, and she talked about a lack of support in not having anyone in post since the temporary member of staff had left in December 2021. The claimant had said that she felt managers were trying to get her out on capability grounds. Miss Cosson said that management did have concerns about errors in her work particularly in the IYFAP schedules and the timeliness with which they were being sent out. The union representative pressed for detail but Miss Cosson and resisted saying that this was an attendance management meeting. They discussed the OH report and recommendations and Miss Cosson confirmed that Stress Risk Assessment was booked for 25 November 2026 and that she was willing to refer the claimant through Health work for face-to-face CBT needed HR approval for this. Miss Cosson confirmed that Mrs Campbell-Allwood had agreed to fund this.

85. They discussed a plan for a phased return to work and Miss Cosson offered to meet with the claimant every Monday via Teams to help the claimant manage her workload and manage the week ahead. They agreed to have a daily check in by phone at 3 PM. The claimant said that in her most recent request for reasonable adjustment she was now requesting reduced hours to 30 a week rather than 32 and Miss Cosson said that a reduction to 30 could be agreed, on the same terms as the part approval of the previous request ie subject to the precondition that the grade 5 person be imposed and subject to the seven criteria that the claimant the induction and training that person. They agreed that the claimant could come into the office and work on site on return from sick leave if that was better for her mental health. They discussed the claimant's sick pay and how annual leave could be used to mitigate the impact of pay expiring on the claimant.

86. Miss Cosson said that medical redeployment to Grade 5 with pay protection that had been offered in May 2022 was no longer available. Miss Cosson pointed out that the claimant had turned down roles (plural) that could have been worked over 4 days. The claimant restated her request for compressed

and now reduced hours in her own role. Miss Cosson told her that as the request had changed and the claimant now wanted 30 hours not 32 she would need to submit another Application Form.

87. Despite the content of that meeting, and the August 2022 meeting, the Grade 5 person was still not in post so in late November 2022 when the claimant was due to return to work on Monday 28 November 2022 she was still facing a return to her full-time 35 hours over five days.

88. The claimant emailed Miss Cosson on 21 November 2022 and attached the previous adjustment requests and pointed out that she had not turned down roles other than the (single) Free Travel Team role in October 2020 and that when she had enquired about that again in April 2021 she had been told it was too late. She said she was aware of other people who had flexible working and adjustments but none of them had to have fixed hours and a termly review. The claimant attached a new request for reasonable adjustment.

Third Request for reasonable adjustment in the form of Fourth Application for Flexible Working

89. The claimant made a further flexible working request on 21 November 2022 to request 4 days per week 7.30 – 3.30, 7.30 hours per day, and to allow Wednesday as a day off. The claimant cited *depression, low mood, brain fog, poor concentration exacerbated due to menopause - day off with help with well being and I will be able to manage my symptoms in relation to sleep and poor concentration.* Mrs Campbell-Allwood again inserted the text from her previous responses into the form, restating that the role is a full-time role, the duties need to be performed on a Wednesday, the risks to the service if they weren't. She restated the criteria that the flexible arrangement would commence as temporary and will be open to review at the end of every term and she restated the precondition of the appointment of the Admissions officer and the seven criteria that the claimant must comply with in the induction and performance of that Admissions Officer before she could have a compressed and reduced working.

Second Stress Risk Assessment 25 November 2022

90. On 25 November 2022 the claimant attended a Stress Risk Assessment meeting with Miss Cosson and with Jane Lucy the health and safety officer. The claimant had her union representative with her at that meeting. The Individual Risk Assessment document recorded that the claimant returned to work on 28 November on a phased return. It stated that the claimant had requested flexible working which had been agreed in principle, it stated that the claimant preferred working from the office and that HR were to confirm that the respondent could pay for face-to-face counselling for the claimant.

Return to Work 28 November 2022

91. The claimant came back to work on 28 November 2022 on her phased return. On 30 November 2022 she emailed Miss Cosson to ask when could she start working her reduced 30 hours per week on a flexible four-day compressed

hours basis. Miss Cosson replied on 2 December 2022 congratulating the claimant on her first week back and providing the claimant with a written work plan covering duties across all five days of the week. In early December Miss Cosson put in place additional training on the EYES computer system for the claimant. On Tuesday, 13 December 2022 Miss Cosson sent the claimant a work plan again covering duties across all five days of the forthcoming week.

92. In January 2023 a new employee, Jeanette, started in the team. The claimant, still awaiting adjustment to compressed and reduced hours, now had to take on the additional duties of inducting and training that member of staff. The claimant was still working five days per week. In February 2023 the claimant again emailed Miss Cosson asking for an update on her flexible working request.

93. Miss Cosson replied saying

> *I know you met with Jeanette last week for her four-week probation review and it went well. I am conscious that your flexible working arrangement is dependent on her being fully trained and able to action tasks in your absence on Wednesdays. So we can all be on the same page can you let me have before you go on leave this week your training plan for her and also what work she needs to be doing in your absence.*

94. The claimant sent Miss Cosson the training plan she had prepared for Jeanette. The claimant explained Jeanette herself had medical issues which meant that it was taking a little longer than might have been expected for her to get to grips with the new things she needed to learn in her new role. On 22 February 2023 the claimant explained to Miss Cosson Jeanette was struggling, a bit emotional, and was not taking in the training which has been provided to her. The claimant outlined problems with understanding and organisation and reported that Jeanette had said that she hadn't thought the role was going to be a PA role. The claimant flagged that Jeanette did not have a basic Microsoft training. Miss Cosson told the claimant that she needed to check in with Jeanette every day, and that she needed to be confident on each item before a new part was added to her role. Miss Cosson said *as her line manager you need to prepare work for her as you know the needs of your section better than I do and are responsible for the day-to-day overseeing of the work.* Miss Cosson then required the claimant to come in to work on site for three days, she had previously been attending on site two days, to supervise Jeanette. The claimant agreed to do so.

95. Jeanette's probation period was extended until July 2023.

96. On 17 April 2023 Jeanette wrote to Miss Cosson expressing concern about the volume of work and she said *I'm very aware that Cheryl is also incredibly busy and I try to do things on my own as much as I can as I've already said sometimes there is only Cheryl who can help. One of my biggest concerns is what would happen if she was ill or on holiday what would be expected of me in that instance?*

97. It was clear by April 2023 that having Jeanette in post, a precondition to

adjustment that Ms Campbell-Allwood had set for the claimant in late August 2022, was not facilitating a move to reduced or compressed hours for the claimant but was, on the contrary, increasing the responsibility of the claimant to train someone else and had led to the claimant attending on site more than before. In late April Miss Cosson again sent the claimant her work plan for the following month which again showed that Miss Cosson required her to be working across all five days.

98. In late April 2023 the claimant was required by Miss Cosson to attend meetings on Wednesdays. Claimant said she could not attend on the following Wednesday 26 April 2023 because she had her nurse appointment having had recent respiratory problems. On 21 April 2023 Miss Cosson required the claimant to send proof of the nurse appointment due to take place the following Wednesday, which she did.

99. In April 2023 following restructure the claimant's role at Grade 6 was to be disestablished. The claimant was informed of this in May 2023. The claimant went off sick on 9 June 2023. Her fit note said "depressed mood". Jeanette resigned in June 2023.

Occupational health referral

100. On 14 July 2023 the claimant attended OH and was found to be unfit for work. The report said

> *I cannot forsee a return to work until the recommendations and reduction in hours have been implemented,*

101. On 15 July 2023 the claimant submitted a grievance. There were two pages of narrative and a detailed tabular chronology. The outcome that the claimant sought was

> *reduction to my hours to allow me to work flexibly without having to wait any longer for another staff member to be in place to train. I would like to start* this with immediate effect as I feel that I've waited longer than I should have done already and been very patient, this has not done me any good as my mental health is severely impacted.

102. The claimant recited the detailed chronology of her applications for flexible working/reasonable adjustments. In summary conclusion she said

> *I have thought hard about whether to submit this grievance under MCC's policy. I am persuaded that given the chronology of events that I set out below it shows a clear lack of a duty of care to me… employee who has worked for over 20 years without issue. I have found myself in the worst health crisis of my life and experienced symptoms that I never thought possible as a result of the menopause… MCC had a policy and I had hoped it would be adhered to…. I have found the opposite… Very little support with my poor mental health… Lack of support from management… All have contributed significantly to my poor mental health. Asking me to put my mental health on hold whilst I train a new member of staff in hindsight was unacceptable and prioritised her needs over my mental health. In hindsight*

I should have respectfully advised my manager at the time that was not acceptable during that time and mental health further declined and I am now absent from work again due to stress that I consider work-related.

Attendance Management Meeting

103. On 31 July 2023 the claimant attended an attendance review meeting with Miss Cosson. The claimant was told that her role was being disestablished and so she would need to submit a new flexible working request. The claimant was very upset at the meeting so it adjourned early. On 16 August 2023 the meeting resumed this time with Mrs Campbell-Allwood and Mr Maitland an HR specialist present.

104. Mrs Campbell-Allwood wrote to her following that meeting confirming the claimant had said at the meeting that the only support she needed to be able to return to work on 18 August was for her flexible working request to be agreed enabling a reduction of working hours. The letter reported that the claimant's request had been outstanding for a long time and the claimant had said she did not believe her request to be taken seriously. The letter recorded that the claimant's union representative had said that it was not reasonable that the claimant was again being asked to reapply for flexible working when she had previously submitted applications. The claimant had informed the meeting that she submitted a grievance. Mr Maitland acknowledged the grievance and apologised for the fact that it had not been acknowledged earlier. Mr Maitland and Mrs Campbell-Allwood explained to the claimant that whilst a grievance would be investigated the grievance outcome would not encompass a response to the flexible working request because there was not yet clarity on the claimant's new role following disestablishment of her previous post. The claimant had been invited to apply for the post of admission officer in the new structure. The claimant was told that if she was successful in attaining that role a flexible working request would be considered by the new relevant manager and if she is not successful she would enter the M-People pathway for members of staff awaiting redeployment and that only when a new position had been secured could a new manager then consider flexible working request in the context of the new role.

105. The letter concluded "*Manchester City Council is committed to the health and well-being of its workforce and to developing a proactive approach to managing attendance at work. The contribution of staff and the provision of quality services to the people of Manchester is highly valued and attendance at work as an intrinsic part of this provision".*

Fourth OH assessment and report 29 August 2023

106. There was a further telephone OH assessment on 29 August 2023 with a recommendation for a long term adjustment to modify work patterns or management systems and to provide supervision. The report said that a reduction in hours would be likely to benefit the claimant's menopause symptoms. The likely return to work date was 21 November 2023. The report recommended a phased return over a period of four weeks. The report said

…… She is unlikely to be able to return to work until the issues have been discussed and the plan agreed to resolve them…….. Perceived work-related issues and her psychological response to them are a contributing factor and a barrier to her return to work….. Cheryl tells me that she has requested to reduce her working hours by the Menopause Policy which was initially agreed. If it is operationally feasible I support that she reduces her hours as this is likely to benefit her management of symptoms related to menopause and low mood by having that break through the week. This is likely to achieve a successful and sustained return to work.

Counselling has been beneficial and I would wish to extend her sessions of the same counsellor.

The report recommended a further Stress Risk Assessment and the report provided that the Equality Act 2010 was likely to apply.

107. On 22 September 2023 the claimant attended a grievance meeting. She was accompanied by her union representative. Miss Jenkinson was the grievance decision-maker. The claimant explained the lengthy history of her flexible working request and the impact that had had on her mental health and menopause symptoms. Although notes were taken that meeting no notes were available to the Tribunal.

108. On 7 November 2023 the claimant chased a grievance outcome in her email to Heather Graham. She remained off sick with low mood and depression

Fifth Occupational health assessment and report 16 November 2023

109. The claimant again saw OH on 16 November 2023 and again the OH report said that the claimant would be unlikely to return to work until barriers to her return, i.e. the working pattern, were resolved.

Attendance Monitoring Meeting

110. The claimant attended an Attendance Monitoring Meeting that same day 16 November 2023. The claimant was told that she needed to attend an interview for a lower graded job role following the restructure and that the four day working week could be agreed once the claimant was in the lower graded job.

111. On 22 November 2023 Mrs Jenkinson wrote to the claimant with the outcome of the grievance. Mrs Jenkinson accepted that the flexible working application had not been dealt with in the timescales in the policy. The outcome was that the request to move to 4 days would be honoured if the claimant was successful in the interview for the lower graded job.

112. The claimant returned to work on 1 December 2023. She had a phased return. Her four-day working week on reduced hours was then agreed in principle but not yet in place.

113. On 5 December 2023 the claimant wrote to Mr Maitland at HR seeking written clarification of the outcome of her grievance. Mr Maitland said that her letter

read like an appeal and would be treated as such. The claimant agreed in writing on 14 December 2023 that her request for clarification be treated as an appeal. She then requested a working arrangement of 33 hours over four days and this commenced in mid-January 2024.

114. An appeal meeting was held on 1 March 2024 with Mr Paul, appeal investigating officer and Miss Reid from HR. The claimant protested about the delay in dealing with her requests for compressed and reduced hours and about her treatment at the hands of managers, and about being forced to have accepted a lower graded role.

115. On 8 April 2024 the claimant started her new role, the lower Grade 5 role, in the homelessness directorate. Her grievance appeal outcome was dated 23 September 2024 and the claimant's grievance was partially upheld.

116. The claimant had understood that she would return to the school's admissions team in February 2025 but this did not happen. The respondent agreed to continue pay protection at grade 6 until February 2027.

117. At the time of final hearing the claimant works reduced and compressed hours in a Grade 5 role with Grade 6 pay protection.

Relevant Law

118. The law on time limits for bringing discrimination complaints is in Section 123 of the Equality Act 2010

123 Time limits

(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(2) …..

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

119. The Equality Act 2010 provides that a complaint of discrimination must be brought within (a) the period of 3 months starting with the date of the act to which the complaint relates, or (b) such other period as the employment

tribunal thinks just and equitable. Conduct extending over a period is to be treated as done at the end of the period and failure to do something is to be treated as occurring when the person in question decided on it. In the absence of evidence to the contrary, a person is to be taken to decide on failure to do something when he does an act inconsistent with doing it, or if he does no inconsistent act, on the expiry of the period in which he might reasonably have been expected to do it.

120. A continuing course of conduct might amount to an act extending over a period, in which case time runs from the last act in question. Hendricks v Commissioner of Police of the Metropolis [2003] IRLR 96 considered the circumstances in which there will be an act extending over a period.

> **"The concepts of policy, rule, practice, scheme or regime in the authorities were given as examples of when an act extends over a period. They should not be treated as a complete and constricting statement of the indicia of "an act extending over a period." I agree with the observation made by Sedley LJ, in his decision on the paper application for permission to appeal, that the Appeal Tribunal allowed itself to be side-tracked by focusing on whether a "policy" could be discerned. Instead, the focus should be on the substance of the complaints that the Commissioner was responsible for an ongoing situation or a continuing state of affairs in which female ethnic minority officers in the Service were treated less favourably. The question is whether that is "an act extending over a period" as distinct from a succession of unconnected or isolated specific acts, for which time would begin to run from the date when each specific act was committed."**

Early Conciliation Provisions

121. Section 18A of the Employment Tribunals Act 1996 contains a requirement that before a person (the prospective claimant) presents an application to institute relevant proceedings relating to any matter, the prospective claimant must provide to ACAS prescribed information in the prescribed manner about that matter.

122. The prescribed period means prescribed in Employment Tribunal procedure regulations. In relation to claiMissfor disability discrimination the prescribed period is three months.

123. The case law on the application of the "just and equitable" extension provides that it is the task of the tribunal to take account of all relevant factors, and leave out of account any which are not relevant: Abertawe Bro Morgannwyg University Local Health Board v Morgan [2018] EWCA Civ 640. Leggatt LJ said this at paragraphs 18-19:

> **"18.First, it is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the Equality Act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in these circumstances to put a gloss on the words of the provision or to interpret it as if it contains such a list. Thus, although it has been suggested that it may be useful for a tribunal in exercising its discretion to consider the list of factors specified in section 33(3) of the Limitation Act 1980 (see British Coal Corporation v Keeble [1997] IRLR 336), the Court of Appeal has made it clear that the tribunal is not required to go through such a list, the only requirement being that it does not leave a significant factor out of account: see Southwark London Borough Council v Afolabi [2003] EWCA Civ 15; [2003] ICR 800, para 33. The position is analogous to that where a**

court or tribunal is exercising the similarly worded discretion to extend the time for bringing proceedings under section 7(5) of the Human Rights Act 1998: see Dunn v Parole Board [2008] EWCA Civ 374; [2009] 1 WLR 728, paras 30-32, 43, 48; and Rabone v Pennine Care NHS Trust [2012] UKSC 2; [2012] 2 AC 72, para 75.

19. That said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh).”

124. In Robertson –v- Bexley Community Centre (T/A Leisure Link) 2003 [IRLR 434] the Court of Appeal considered the extent of the discretion to extend time on a just and equitable basis under the discrimination legislation. The Employment Tribunal has a “wide ambit”. At paragraph 25 of the judgment Auld LJ said:-

125. “It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When Tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify a failure to exercise the discretion. Quite the reverse. A Tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule.”

126. Section 6 of the Equality Act 2010 defines disability.

6 Disability

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

127. Section 20 and 21 Equality Act 2010 provide

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

……...

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

128. The words "provision criterion or practice are not defined in The Equality Act 2010. The Commission Code of Practice paragraph 6.10 says the phrase "should be construed widely so as to include for example any formal or informal policy, rules, practices, arrangements or qualifications including one off decisions and actions".

129. The importance of a Tribunal going through each of the constituent parts of the provisions relating to the duty to make reasonable adjustments was emphasised by the EAT in Environment Agency –v- Rowan [2008] ICR 218 and reinforced in The Royal Bank of Scotland –v- Ashton [2011] ICR 632.

130. The question of what will amount to a PCP was considered by the Employment Appeal Tribunal in 2018 in Sheikholeslami v The University of Edinburgh UK EATS 2018 Mrs Justice Simler considered the comparison exercise. At paragraph 48:

"It is well established that the duty to make reasonable adjustments arises where a PCP puts a disabled person at a substantial disadvantage compared with people who are not disabled. The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP. That is not a causation question…There is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's circumstances."

"The PCP may bite harder on the disabled group than it does on those without a disability. Whether there is a substantial disadvantage is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability."

131. The Code provides that a PCP is a PCP that is applied by or on behalf of the respondent. In Ishola v Transport for London [2020] EWCA Civ 112 Lady Justice Simler considered what might amount to a PCP at para 35:

132. "The words "provision, criterion or practice" are not terMissof art, but are ordinary English words…they are broad and overlapping, and in light of the object of the legislation, not to be narrowly construed or unjustifiably limited in their application."

133. And at paragraph 37:

"In my judgment, however widely and purposively the concept of a PCP is to be interpreted,

> **it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treated employee by an act or decision and neither direct discrimination nor disability -related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP."**

134. As to whether a disadvantage resulting from a provision, criterion or practice is substantial, Section 212(1) defines substantial as being "more than minor or trivial".

135. The test of reasonableness of an adjustment is an objective one. The Tribunal may have regard to all the circumstances of the case including the needs of the respondent business and the needs of the claimant individual. A relevant factor may include whether or not the proposed adjustment would be successful. The Employment Appeal Tribunal in Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10 said that they need not even be "good or real prospect" of a proposed adjustment removing substantial disadvantage caused by a PCP for that adjustment to be reasonable. The Court of Appeal in Griffiths v The Secretary of State for Work and Pensions [2015] EWCa 1573 approved that approach. A reasonable adjustment does not need to be completely effective. It is a matter for the tribunal to consider the potential impact of the proposed adjustment on the substantial disadvantage in determining reasonableness.

136. The Tribunal is grateful to the claimant and respondent representatives for their detailed written submissions.

Applying the Law

Time Limits

137. The claimant went to ACAS on 13 October 2023. Acts of discrimination prior to 14 July 2023 were out of time. The Tribunal finds that the failures to reasonably adjust prior to 14 July 2023 formed part of a course of conduct extending over a period of time. Section 123 Equality Act 2010 provides that conduct extending over a period is to be treated as having been done at the end of the period. The respondent did not adjust to permit the claimant to work a four day week until it communicated that she could work a 4 day week on 22 November 2023. The respondent kept in force a discriminatory regime of insisting on a five-day working week from April 2021 until the claimant began working a four day week in January 2024. Evidence for the existence of that regime can be found in the cut and paste approach to decision-making. The Tribunal finds that the respondent did not stop to consider the requests for reasonable adjustments/flexible working as being different from the request for flexible working made before the respondent had knowledge of the claimant's disability and substantial disadvantage. The instances of refusal of the claimant's requests were linked to one another by decision-maker and rationale and constituted a continuing discriminatory state of affairs. The conduct complained of, failure to reasonably adjust ran from the respondent's duty to adjust arising on 8 April 2021 when it had become aware she was at a substantial disadvantage so that all that conduct from April 2021 forms part of one course for the purposes of Section 123 with the latest in time act, the failure to allow compressed and reduced hours working until 21 November

2023, which act brought the earlier failings into time.

138. The Tribunal had regard to the nature of the conduct complained of; failures to allow flexible working, specifically to work a compressed week and reduced hours, initially (pre April 2021) requested for lifestyle reasons and later by way of reasonable adjustment. All of the claimant's complaints related to her working pattern, wanting to compress her hours into four days and later wanting to reduce her hours. It was conduct of the same kind. The claimant was complaining about the same decision makers over that period of time so that the conduct was carried out by the same alleged discriminators; Miss Cosson, Mrs Campbell-Allwood and Miss Devine from April 2021 through to November 2023.

139. The reasons given for not affording compressed and later reduced working were given by Mrs Campbell- Allwood verbally initially in 2020 prior to the period of discrimination in this claim but those reasons were transposed later by the respondent into later refusals. The Tribunal accepts the evidence of the claimant and the submissions of the claimant's representative, and saw the corroborating documentation, that the same text was used to seek to justify why the claimant could not have compressed hours 4 days per week in August and in November 2022 as had been used earlier in 2020. The respondent attempted to portray its response as an approval subject to criteria, which the Tribunal has referred to above as the seven criteria, and those criteria relating to recruitment and training of a new member of staff, remained operative over the claimant from 24 August 2022, through the disestablishment of her post, until 21 November 2023.

140. For those reasons the Tribunal finds that the respondent's conduct was part of a course of conduct and rejects the respondent's submissions that any of the alleged acts of discrimination by way of failure to reasonably adjust were out of time.

141. If the Tribunal is wrong about that in law so that there was no course of conduct by which earlier acts were brought into time by later acts, then the Tribunal would have exercised its just and equitable discretion to extend time.

142. Whilst exercise of discretion on time should be an exception not the rule the Tribunal would have had regard to the claimant's persistent attempts in writing and verbally with support from her union to be heard about substantial disadvantage from May 2021 to November 2023. She engaged with proper internal processes and waited patiently despite the negative impact of the delay on her health. She was unwell as documented in the OH reports and the Tribunal accepts her oral evidence that she was fatigued, experiencing brain fog and loss of concentration and that when she was at home she needed to rest. She had low energy, fatigue, poor concentration, brain fog and physical gynaecological symptoms too, including a low point in July 2022 when she had had a coil fitted and experienced low mood and suicidal feelings.

143. The Tribunal also had regard to the fact that the respondent dressed up a refusal as an acceptance of her request and imposed the precondition of

recruitment and seven criteria before she could have her adjustment. That was a significant factor in the exercise of discretion; that the respondent encouraged her to keep holding on and hoping that change would come soon. She could not have known at each step of the journey how long that position would eventually last, over two years. Tribunal accepts the claimant's submissions based on Matusowicz v Kingston upon Hull City Council [2009] EWCA 22 and Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA 64 tribunal adopt a sympathetic approach to the granting of an extension of time and just and equitable grounds and that in ascertaining the correct start date of the period in which the employer might reasonably have been expected to comply with its duty the tribunal ought in principle to assess it from the claimant's point of view having regard to the facts known or which ought reasonably to have been known by the claimant at the relevant time . This position was followed in Fernandes v Department of Work and Pensions [2023] EAT 114. The Tribunal accepts the claimant's submission that the respondent did nothing from which she could understand that she was not going to get her four-day working week. In the circumstances set out above of the claimant's engagement with processes, her ill health, her grievance, and the respondent's false promises and holding out of its position as that of albeit pre-requisite conditional agreement and imminent implementation, the Tribunal considers it would have been in the interests of justice to extend time and would have exercised its just and equitable discretion had it not found the acts to have been a course of conduct extending over a period.

Disabled status

144. The respondent conceded, so that the Tribunal was not required to adjudicate on disabled status, that the claimant was disabled for menopause from March 2021 and for anxiety and depression from 8 April 2021.

145. Menopause itself will not necessarily amount to a disability. What matters is the substantial nature of the adverse effect of the condition over a period of 12 months or more. The Tribunal must look to each individual case. In this case the claimant's symptoms were described as severe by the OH professionals and the claimant was receiving treatment from her GP.

Knowledge

146. The respondent conceded knowledge from 8 April 2021 for anxiety and depression and for menopause from 8 May 2021.

Provision Criterion or Practice

147. The respondent conceded that it operated a PCP of imposing a requirement upon the claimant to work full-time, a five day week, from March 2021 to November 2023.

Substantial disadvantage

148. The respondent disputed substantial disadvantage. The Tribunal finds that the claimant experienced substantial disadvantage in the operation of the PCP

from Spring 2021. She was a Grade 6 Senior officer and her work involved preparation and coordination of paperwork for panels that would decide placement of children in schools. This work required attention to detail and it needed to be accurate and prepared on time. She was suffering fatigue, lack of concentration and brain fog. This caused her difficulty working with the computer system because of forgetfulness. She was more likely than someone not disabled to make mistakes, to be slower in her functioning, to feel pressured and stressed, to experience cumulative fatigue from working consecutive days and to be unable to meet deadlines. That was not minor. The disadvantage was substantial because it affected her ability to perform in her role to such an extent that she was making mistakes and struggling to keep up to date and feeling overwhelmed in her workload. The Tribunal accepts her oral evidence, corroborated wholly by what she was saying at the time, that she could not manage at her previous performance level when working consecutive days but needed rest mid week.

Knowledge of substantial disadvantage

149. The Tribunal accepts the claimant's submissions rooted in the EHRC Employment Statutory Code of Practice that the employer must do all they can reasonably be expected to do to find out the impact of a PCP on a disabled employee. The Tribunal accepts the claimant submission that a respondent cannot hide behind referrals to Occupational Health nor absolve itself of responsibility for decision-making in relation to reasonable adjustments in sole reliance on OH recommendations.

150. The claimant was vocal about the impact on her, about the substantial disadvantage at the time. The Tribunal accepts the claimant's evidence about what she said about the effect of working 5 days per week on her. The Tribunal notes that the respondent had meetings with the claimant, saw OH reports and other documents from which the Tribunal finds that the respondent had knowledge of substantial disadvantage including

    a. What was said as set out in the facts above at the meeting on 8 April 2021 with Michelle Devine at paragraph 41 above.

    b. The content of the 13 May 2021 OH report that cited disturbed sleep patterns, anxiety, hot sweats, a reduction in her concentration level and memory as set out at paragraph 43 above.

    c. The content of the 28 May 2021 OH report that described severe symptoms of menopause at paragraph 45 above.

    d. The factual finding at paragraph 47 above that by the end of May 2021 the claimant was making mistakes at work because of her menopause symptoms.

    e. The content of the 8 April 2022 OH report that cited that the claimant had been disabled since March due to her symptomatology and that the Equality Act is likely to apply

    f. The content of the 9 May 2022 meeting as recited in the facts above.

The Tribunal accepts the claimant's evidence that she told the respondent about the impact of the 5 days week on her and the Tribunal finds that she made explicit at that meeting the link between working five days per week, her conditions and her ability to do her work.

g. The content of the 20 October 2022 OH report which set out impaired cognition due to the menopause, episodes of brain fog, reduced concentration and fatigue.

h. The content of the attendance management review meeting on 8 November 2022 as set out in the respondent's letter of 16 November 2022 at paragraph 85 above at which meeting the Tribunal accepts that the claimant made explicit that it was harder for her to be able to complete tasks that she used to be able to manage and that this was because of fatigue at working a five day week.

i. The fact that the claimant broke down in a meeting on 31 July 2022.

j. The content of the attendance management review meeting on 16 August 2023.

k. The content of the attendance management review meeting on 17 October 2023

l. The outcome of the OH referral on 16 November 2023

m. The content of the Grievance outcome on 22 November 2023 in which Val Jenkinson reports the impact on the claimant.

151. The Tribunal finds that the respondent had knowledge of the operation of the PCP on the disability causing substantial disadvantage from 8 April 2021 so that the duty to make reasonable adjustments arose then. There was a referral to OH but the failure to adjust began when having had the meeting on 8 April, the respondent did not act on the OH advice. The obligation was to take such steps as were reasonable to remove the disadvantage. The disadvantage, already substantial from 8 April 2021 was worsening over time. The Tribunal finds that the respondent ought to have acted on the OH advice from the first report dated 13 May 2021 by carrying out a stress risk assessment within a reasonable period, say one month, of that recommendation. It did not do so. The failure to adjust began around mid June 2021.

152. The claimant's case on failure to adjust was set out in the List of Issues. The Tribunal was asked to adjudicate on the following issue:

Failure to reasonably adjust / reasonable step

List of Issues: 6: Did the respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage? The claimant says that the following adjustments to the PCP would have been reasonable: to have reduced her days of work to four each week, with a break day on a Wednesday, and a proportionate reduction in her working hours.

The respondent says that despite not accepting substantial disadvantage it did at all material times take reasonable steps to adjust for the claimant.

153. The Tribunal finds that the respondent has not met its burden of demonstrating that the proposed adjustment of working in compressed week four days with Wednesdays as a day off was not reasonable. The Tribunal finds that it would have been reasonable to have reduced the claimant's working pattern to a 4 day week with a break on Wednesdays by mid July 2021. That allowed time for the OH report to be actioned and a Stress Risk Assessment carried and then a further two weeks for the Risk Assessment outcomes to be implemented.

154. The Tribunal rejects the respondent's submission that it took reasonable steps at all material times. The respondent said that it

    a. Offered a move to an alternate post:

        i. The Free Travel Team post was offered at a time when the claimant was not disabled. No duty had arisen. That offer falls outside the ambit of the Tribunal's reasoning.

        ii. The 9 May 2022 offer of medical redeployment made by Miss Cosson was not a reasonable step. The Tribunal accepts the respondent's submission that that this was canvassed as an option. At this point no stress risk assessment had been carried out. The recommendations of the OH report had not been complied with. The Tribunal finds that it was not reasonable *as a starting point* to invite the claimant to consider demotion. If it had been offered after an SRA and OH referral and offered as part of a suite of alternatives and *the claimant had requested it* then as a contractual variation it may also have been a reasonable adjustment. The Tribunal rejects the respondent's position that an offer of demotion even with interim pay protection is a reasonable step without having first considered internal changes to the job role, reallocation of tasks between manager and claimant, reallocation across the team of grade 6 staff and other restructure within the team to see if the work needed to be done on Wednesdays could be done by someone else with some of their tasks going to the claimant, reflection on how the tasks had been covered when the claimant was off sick, so as to accommodate compressed hours.

    b. Agreed to compressed hours when a new recruit was in post and performing

        i. The Tribunal finds that agreeing compressed hours in principle with future contingency was not a reasonable step. The respondent set up a precondition of recruitment which was outwith the claimant, her line manager and even the Head of Service's ability to deliver. It set up the seven criteria which

> were an increased burden on the claimant that she would have to manage and train the new recruit and that that person would have to be performing well before the claimant could move to compressed hours. When the new recruit was in post she lacked basic microsoft skills so it was immediately evident that she would need more support ie, that the claimant would have to wait even longer for compressed hours. Reasonableness must balance the needs of the service and the individual, this was an imbalanced response because it placed all of the focus on service needs and effectively told the claimant to put the impact of the PCP on her disability on hold and keep experiencing increasing disadvantage until it could recruit and she could then, at a burden to herself, train and develop a new recruit to a level of performance it was happy with.

155. The Tribunal in assessing reasonableness of the recruitment plan as a reasonable step had regard to the size of the employer. It asked questions of respondent's witnesses as to the structure of the department and whether or not efforts had been made to consider reallocation of tasks or redeployment within the team or from elsewhere in the respondent to address the claimant's substantial disadvantage. The Tribunal was concerned that there was no evidence of those things having been considered beyond cursory decision making that the work had to be done on a Wednesday and could only be done by the claimant. The respondent did not demonstrate that it had carefully considered task allocation across the team and potential for reallocation within the team. The reliance on old reasoning, the cut and paste refusal from 2020 when the claimant had been asking for flexible working for lifestyle choice reasons, (as opposed to disability related reasons) corroborated the finding that the respondent failed to properly consider the request. That finding was further corroborated by the lack of evidence about who covered the "claimant-only-and-must-be-done-on-a-Wednesday" tasks when the claimant was absent. That question was put by the Tribunal and the evidence was that line manager Ms Cosson had covered the tasks with other duties of hers being reallocated or unattended. The Tribunal finds it was unreasonable of the respondent not to have looked at that reallocation arrangement as a longer term solution. The Tribunal found that if that could be done for periods of long term sickness the respondent was unreasonable not to have considered it as a medium term interim solution pending recruitment and development and performance, at its effort not the claimant's, of a new colleague.

156. The Tribunal also had regard to the size of the respondent and the evidence it heard about alternative roles in the Free Travel Team (prior to the periods under consideration) and the Homelessness directorate later or about medical redeployment. That signalled to the Tribunal that internal sideways moves by secondment, or demotion with protection, were a possibility. The respondent was unreasonable in failing to adequately explore a sideways move not for the claimant out of the team but to bring someone in to cover Wednesdays.

157. The Tribunal heard that there were six or seven Grade 6 employees like the claimant on the same generic job description yet the respondent advanced no

evidence of it having considered redistribution of tasks or swapping job content so that the claimant could perform over 4 days and the other colleague could pick up the Wednesday tasks. Later from July 2021 the claimant's role changed so that it was just the claimant working alone. This undoubtedly increased the respondent's vulnerability to reliance on the claimant but the Tribunal finds that the respondent cannot reasonably rely on its own vulnerability in the circumstances of a team with other grade 6 staff, generic job descriptions, a manager who can cover when the claimant is off and a huge employer, to defeat the claimant's right to have reasonable adjustment for disability.

158. The Tribunal understood from the evidence it heard and saw that the needs of the respondent were for reliable accurate work, on time, to meet statutory duties, that it needed someone to liaise with and keep informed parents schools and other interested parties in the work going to the panels and the places being offered to the children. It needed that work to do be done on particular days of the week and for that work to be done by someone knowledgeable and competent to do it. It understood the needs of the claimant to have mid-week rest time to manage her lack of sleep, to improve her concentration, reduce her brain fog, reduce her anxiety and help her manage her depression and low mood. It acknowledges her statutory right as a disabled person to a reasonable adjustment.

159. The respondent failed in substance to make an adjustment to allow the claimant to work a compressd 4 day week which it ought reasonably to have made. That failure can be broken down, in response to the issues raised in this case, into the following component parts. The respondent did not take reasonable steps in that

    a. It failed to carry out a Stress Risk Assessment within a month of the OH recommendation for one on 13 May 2021.

    b. It failed to carry out SRA after one was recommended in the second OH report on 28 May 2021.

    c. It persisted in its failure to carry out the OH recommended SRA after a third OH report on 8 April 2022.

    d. It restated a rationale (cut and pasted) from a previous request the respondent failed to act reasonably which showed it was not considering the request as a disability related issue.

    e. It set out the precondition of recruitment of another member of staff.

    f. It imposed seven criteria, which in effect increased the burden on the claimant, as prerequisites to allowing compressed working.

    g. It dressed up a refusal as an approval. The Tribunal accepts the respondent's oral evidence at Tribunal that it takes months and months to recruit and then to induct and train. The respondent held out to the claimant in August and September 2022 that the recruitment was imminent.

h. It failed to intervene so as to find an alternate to the recruitment plan by way of adjustment, when the claimant flagged that the new recruit was struggling and would need more time.

i. It expected the claimant to work more than her health allowed because it had difficulty and delay in recruiting a replacement.

160. The reasons given in writing for refusal following the August 2022 meeting did not address the work on Wednesdays being done by someone else. The respondent did not appear to consider how that work had been covered whilst the claimant had been off sick from 27 March 2022 to 15 July 2022.

161. The claimant had said that she needed the compressed working to start from September 2022. She said that she had already waited. She said *it could be as long as a piece of string.*

162. In the List of Issues the Tribunal was asked to say when the failure to adjust began.

List of Issues 7: By what date should the respondent reasonably have taken those steps?

The claimant accepts that the reasonable adjustment was made with effect from December 2023 but her case is that it should have been much earlier given that she made several flexible work requests between 24 July 2020 and 21 November 2022 and raised a grievance in relation to the matter on 15 July 2023.

163. The respondent should have allowed the claimant to work the compressed hours from mid July 2021. The Tribunal makes that assessment because the OH report from April recommended a SRA. It would have taken time, say a month, to get the SRA done. The Tribunal finds based on what the claimant had said and what the OH report stated, that an SRA would have revealed that it was working five consecutive days that was the stressor and that a mid week break was needed. The Tribunal finds that it then may have taken, reasonably, another month to get someone seconded in to cover Wednesdays or for Miss Cosson to take on Wednesdays work and get her tasks covered or for the duties of the staff on generic grade 6 contracts to be reallocated so that the claimant took on other duties across four days a week freeing up Miss Cosson and or other grade 6 staff to cover Wednesdays. That could have been an interim solution pending recruitment training and development which Miss Cosson and Mrs Campbell-Allwood knew from experience would need approval and would take a long time.

164. In relation to the failure to adjust to allow reduced hours the above reasoning at paragraphs 152-160 also applies save that the reduction in hours was from July 2022 when the claimant requested a reduction to 32 hours over four days and then in November 2022 when she requested 30 hours over four days. The respondent has failed to discharge its burden of showing that its refusal was reasonable for the reasons set out above and in particular because it did not demonstrate that it had considered reallocation of duties amongst existing grade 6 staff, recruiting or seconding in another member of staff from another department.

165. The Tribunal was hampered by lack of documentation. It records the absence of notes of key meetings, with no plausible reason from the respondent as to the absence of that documentation. No adverse inference is drawn from those absences or from the absence of evidence from other witnesses, such as Miss Cosson. There has been no need to draw inferences because the Tribunal had direct oral evidence of the content of relevant meetings and communications from the claimant which it accepted as set out in the facts above.

Conclusion

166. The claim for failure to reasonably adjust succeeds for the reasons set out above. The respondent failed to reasonably adjust from mid July 2021 to November 2023 in relation to compressed working and from July 2022 until November 2023 in relation to reduced hours.

167. There will need to be a remedy hearing. A notice of hearing will be sent. The Tribunal refers to Rule 4 of the Employment Tribunal Procedure Rules 2024 and its ongoing obligation to encourage parties to settle disputes, including remedy, without the need for a hearing.

168. In an effort to assist the parties the Tribunal's provisional view is that the following non exhaustive list of factors will be relevant to remedy

    a. *The anger, upset and distress caused by the failure to reasonably adjust.*

    b. *The duration of period of failure to adjust / injury to feelings:*

        i. The delay in actioning the OH 2021 recommendation for a SRA to the date of the SRA being undertaken in May 2022 and

        ii. then no reasonable adjustments being made until November 2023

    c. *The nature of the conduct not so as to be punitive but so as to assess its likely impact, the Tribunal has heard from the claimant that the following were hurtful to her*

        i. The circumstances of the SRA being actioned, following the 9 May 2022 meeting when medical redeployment was posited as a solution but not actioned when first recommended to help her manage in her own role.

        ii. The delays and failures to act on OH report recommendations throughout.

        iii. The "cut and paste" approach to the refusal, using previous non disability related rationale to respond to a disability related request.

iv. The imposition of the recruitment plan precondition and seven criteria.

v. The tone of the written reasons at paragraph 72 above for declining the request for flexible working / reasonable adjustment following the 24 August 2022 meeting; the "you Cheryl" emphasis placed on the claimant for the solution in those reasons.

vi. The fact that the respondent was taking steps under AMP and the claimant felt vulnerable to action being taken against her on capability grounds and her feeling that management was wanting to get her out.

vii. The respondent holding out of recruitment as an imminent solution in August and September 2022.

169. The Tribunal apologises for delay in the preparation and communication of this Reserved Judgment and Reasons.

Employment Judge Aspinall

Date: 28 April 2026

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

2 June 2026

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FOR EMPLOYMENT TRIBUNALS

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